

REMARKS

Claims 1-26 are pending in the present application. In the above amendments, Applicants amend claims 22 and 23, cancel claim 25, and add new claims 27-34.

In the Office Action mailed April 28, 2004, Examiner rejected claims 22, 23 and 25 under 35 U.S.C. § 112. Furthermore, Examiner rejected claims 1, 2, 6, 10, 20, and 26 under 35 U.S.C. §102(e) as being anticipated by Lundby et al. (U.S. Patent. No. 6,249,683), hereinafter referred to as Lundby. Examiner also rejected claim 24 under 35 U.S.C. §102(e) as being anticipated by Moon et al. (U.S. Patent No. 6,671,266), hereinafter referred to as Moon.

Further, Examiner rejected claims 3-4 under 35 U.S.C. §103(a) as obvious over Lundby in view of Moon. Examiner rejected claim 5 under 35 U.S.C. §103(a) as obvious over Lundby in view of Chheda et al. (U.S. Patent No. 6,515,975), hereinafter referred to as Chheda. Examiner rejected claim 7 and 8 under 35 U.S.C. §103(a) as obvious over Lundby in view of Love (U.S. Patent No. 6,148,208), hereinafter referred to as Love. Finally, claim 19 is rejected under 35 U.S.C. §103(a) as obvious over Lundby.

Claims 9, 11-18, and 21 are objected to as depending upon rejected base claims but would be allowable if rewritten to include all features of the rejected base claim and any intervening claims so as not to depend upon the rejected base claims.

Applicants respectfully respond to this Office Action.

Claim Rejections – 35 USC § 112

Claims 22, 23 and 25 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regards as the invention. Applicants amend claims 22 and 23 to change their base claim from claim 20 to 21. This amendment fixes all antecedent basis problems and these claims are now in a position for allowance. These amendments have ample support in the specification as originally filed and do not constitute new matter.

Applicants also cancel claim 25 without prejudice.

Claim Rejections – 35 USC § 102

Claims 1, 2, 6, 10, 20, and 26 are rejected under 35 U.S.C. § 102(e) as being anticipated by Lundby. Claim 24 is rejected under 35 U.S.C. § 102(e) as being anticipated by Moon.

All of Applicants' claims are novel and patentable over Lundby. For example, Applicants' claim1 includes the feature "wherein the second indication is formed by aggregating a plurality of bits allocated for feedback for the second transmission." Lundby does not teach or recite this feature. Examiner states that Lundby, Fig. 1C, element 120A recites this feature but element 120A in Lundby is a data stream from base station 1 after demodulation at the mobile station. This element is distinct from "aggregating a plurality of bits allocated for feedback for the second transmission" as recited in Applicants' claim 1. The aggregating a plurality of bits allocated for feedback is explained in Applicants' specification as originally filed as "the allocated bits for each power control sub-channel can be aggregated to form a more reliable, lower rate sub-stream" (see page 8, first paragraph of Applicants' specification). Because Lundby does not teach this aggregating feature which is in all of Applicants' claims, all of Applicants' claims are novel and patentable over Lundby.

Moon also does not teach or recite the aggregating feature discussed above, and therefore Applicants' claim 24 is novel and patentable over Moon.

Claim Rejections – 35 USC § 103

Examiner rejected claims 3-4 under 35 U.S.C. §103(a) as obvious over Lundby in view of Moon. Examiner rejected claim 5 under 35 U.S.C. §103(a) as obvious over Lundby in view of Chheda et al. (U.S. Patent No. 6,515,975), hereinafter referred to as Chheda. Examiner rejected claim 7 and 8 under 35 U.S.C. §103(a) as obvious over Lundby in view of Love (U.S. Patent No. 6,148,208), hereinafter referred to as Love. Finally, claim 19 is rejected under 35 U.S.C. §103(a) as obvious over Lundby.

35 U.S.C. §103(c) states that subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Lundby and the present Application are both assigned to Qualcomm, Inc. Moreover, the present invention was subject to assignment to Qualcomm, Inc. at the time the invention was made. Therefore, under 35 U.S.C. §103(c), because Lundby only qualifies as cited art under §102(e) and the present Application was filed after November 29, 1999, Lundby cannot be used as §103(a) art against the present application. All of Applicants' claims are therefore patentable over Lundby.

Allowable Subject Matter

Claims 9, 11-18, and 21 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. As explained above, all of the base claims are patentable and therefore all Applicants' claims, including rejected claims 9, 11-18 and 21 should be allowed.

New Claims

Applicants add new claims 27-34. All new claims have ample support in the specification as originally filed and therefore do not constitute new matter.

REQUEST FOR ALLOWANCE

In view of the foregoing, Applicants submit that all pending claims in the application are patentable. Accordingly, reconsideration and allowance of this application are earnestly solicited. Should any issues remain unresolved, the Examiner is encouraged to telephone the undersigned at the number provided below.

Respectfully submitted,

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